

Trusts and Receipt of Certain Foreign Gifts,” Forms 3520-A, “Annual Information Return of Foreign Trust With a U.S. Owner,” Forms 5471, “Information Return of U.S. Persons With Respect To Certain Foreign Corporations,” Forms 8621, “Return by a Shareholder of a Passive Foreign Investment Company or a Qualified Electing Fund,” Forms 8865, “Return of U.S. Persons With Respect To Certain Foreign Partnerships,” Forms 8891, “U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans,” or such other form under title 26 of the United States Code identified by the Secretary under § 1.6038D-7T(a), timely filed with the Internal Revenue Service on which excepted foreign financial assets are reported or reflected for the taxable year.

(b) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

(c) *Expiration date.* The applicability of this section expires December 12, 2014.

[T.D. 9567, 76 FR 78563, Dec. 19, 2011, as amended at 77 FR 9845, Feb. 21, 2012]

**§ 1.6038D-5T Valuation guidelines (temporary).**

(a) *Fair market value.* Except as provided in paragraphs (c) and (e) of this section, the value of a specified foreign financial asset for purposes of determining the aggregate value of specified foreign financial assets held by a specified person and the maximum value of a specified foreign financial asset required to be reported on Form 8938, “Statement of Specified Foreign Financial Assets,” is the asset’s fair market value.

(b) *Valuation of assets—(1) Maximum Value.* Except as provided in this section, the maximum value of a specified foreign financial asset means a reasonable estimate of the asset’s maximum fair market value during the taxable year.

(2) *U.S. dollars.* For purpose of determining the aggregate value of specified foreign financial assets in which a specified person has an interest and determining the maximum value of a

specified foreign financial asset, the value of a specified foreign financial asset denominated in a foreign currency during the taxable year must be determined in the foreign currency and then converted to U.S. dollars.

(3) *Asset with no positive value.* If the maximum fair market value of a specified foreign financial asset is less than zero, its value is treated as zero for purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an interest and determining the maximum value of the specified foreign financial asset.

(c) *Foreign currency conversion—(1) In general.* Except as provided in paragraph (c)(2) of this section, the U.S. Treasury Department’s Financial Management Service foreign currency exchange rate is to be used to convert the value of a specified foreign financial asset into U.S. dollars for purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an interest and determining the maximum value of a specified foreign financial asset.

(2) *Other publicly available exchange rate.* If no U.S. Treasury Financial Management Service foreign currency exchange rate is available for a particular currency, another publicly available foreign currency exchange rate may be used to convert the value of a specified foreign financial asset into U.S. dollars. In such case, the source of the foreign currency exchange rate must be disclosed on Form 8938.

(3) *Currency exchange rate.* In converting the currency of a foreign country, the foreign currency exchange rate applicable for converting the currency into U.S. dollars (that is, to purchase U.S. dollars) must be used.

(4) *Determination date.* In converting the currency of a foreign country into U.S. dollars for purposes of determining the maximum value of a specified foreign financial asset and determining the aggregate value of specified foreign financial assets in which a specified person has an interest, the applicable foreign currency exchange rate is the rate on the last day of the taxable year of the specified person, even

if the specified person sold or otherwise disposed of a specified foreign financial asset prior to the last day of such year.

(d) *Financial accounts.* A specified person may rely upon periodic account statements provided at least annually to determine a financial account's maximum value unless the specified person has actual knowledge or reason to know based on readily accessible information that the statements do not reflect a reasonable estimate of the maximum account value during the taxable year.

(e) *Asset held in a financial account.* The value of an asset held in a financial account maintained by a foreign financial institution is included in determining the value of that financial account for purposes of § 1.6038D-5T(a).

(f) *Other specified foreign financial assets—*(1) *General rule.* Except as provided in paragraphs (f)(2) and (f)(3) of this section, for specified foreign financial assets that are not held in a financial account maintained by a foreign financial institution, a specified person may use the value of the asset as of the last day of the taxable year on which the specified person has an interest in the asset as the maximum value of that asset, unless the specified person has actual knowledge or reason to know based on readily accessible information that the value does not reflect a reasonable estimate of the maximum value of the asset.

(2) *Interests in trusts that are specified foreign financial assets—*

(i) *Maximum value.* If a specified person is a beneficiary of a foreign trust, the maximum value of the specified person's interest in the trust is the sum of—

(A) the fair market value, determined as of the last day of the taxable year, of all of the currency or other property distributed from the foreign trust during the taxable year to the specified person as a beneficiary; and

(B) the value as of the last day of the taxable year of the specified person's right as a beneficiary to receive mandatory distributions from the foreign trust as determined under section 7520.

(ii) *Reporting threshold.* For purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an inter-

est, if the specified person does not know or have reason to know based on readily accessible information the fair market value of the person's interest in a foreign trust during the taxable year, the value to be included in determining the aggregate value of the specified foreign financial assets is the maximum value of the specified person's interest in the foreign trust under paragraph (f)(2)(i) of this section.

(3) *Interests in estates, pension plans, and deferred compensation plans.*

(i) *Maximum value.* The maximum value of a specified person's interest in a foreign estate, foreign pension plan, or a foreign deferred compensation plan is the fair market value, determined as of the last day of the taxable year, of the specified person's beneficial interest in the assets of the foreign estate, foreign pension plan, or foreign deferred compensation plan. If the specified person does not know or have reason to know based on readily accessible information such fair market value, the maximum value to be reported is the fair market value, determined as of the last day of the taxable year, of the currency and other property distributed during the taxable year to the specified person as a beneficiary or participant.

(ii) *Reporting threshold.* For purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an interest, if the specified person does not know or have reason to know based on readily accessible information the fair market value of the person's interest in a foreign estate, foreign pension plan, or foreign deferred compensation plan during the taxable year, the value to be included in determining the aggregate value of the specified foreign financial assets is the fair market value, determined as of the last day of the taxable year, of the currency and other property distributed during the taxable year to the specified person as a beneficiary or participant.

(g) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

(h) *Expiration date.* The applicability of this section expires December 12, 2014.

[T.D. 9567, 76 FR 78564, Dec. 19, 2011, as amended at 77 FR 9845, Feb. 21, 2012]

**§ 1.6038D-6T Specified domestic entities (temporary). [Reserved]**

**§ 1.6038D-7T Exceptions from the reporting of certain assets under Section 6038D (temporary).**

(a) *Elimination of duplicative reporting of assets—(1) In general.* A specified person is not required to report a specified foreign financial asset on Form 8938, “Statement of Specified Foreign Financial Assets,” if the specified person—

(i) Reports the asset on at least one of the following forms timely filed with the Internal Revenue Service for the taxable year—

(A) Form 3520, “Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts” (in the case of a specified person who is the beneficiary of a foreign trust);

(B) Form 5471, “Information Return of U.S. Persons With Respect to Certain Foreign Corporations”;;

(C) Form 8621, “Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund”;;

(D) Form 8865, “Return of U.S. Persons With Respect to Certain Foreign Partnerships”; or

(E) Form 8891, “U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans”; or

(F) Any other form under title 26 of the United States Code timely filed with the Internal Revenue Service and identified for this purpose by the Secretary in regulations or other guidance; and

(ii) Reports on Form 8938 the filing of the form on which the asset is reported.

(2) *Foreign grantor trusts.* A specified person that is treated as an owner of a foreign trust or any portion of a foreign trust under sections 671 through 679 is not required to report any specified foreign financial assets held by the foreign trust on Form 8938, provided—

(i) The specified person reports the trust on a Form 3520 timely filed with

the Internal Revenue Service for the taxable year;

(ii) The trust timely files Form 3520-A, “Annual Information Return of Foreign Trust With a U.S. Owner,” with the Internal Revenue Service for the taxable year; and

(iii) The Form 8938 filed by the specified person for the taxable year reports the filing of the Form 3520 and Form 3520-A.

(b) *Owner of certain trusts.* A specified person that is treated as an owner of any portion of a domestic trust under sections 671 through 678 is not required to file Form 8938 to report any specified foreign financial asset held by the trust if the trust is—

(1) A widely-held fixed investment trust under § 1.671-5; or

(2) A liquidating trust within the meaning of § 301.7701-4(d) of this chapter that is created pursuant to a court order issued in a bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq.*) or a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq.*) of the Bankruptcy Code.

(c) *Bona fide resident of a U.S. possession.* A specified individual who is a bona fide resident of a U.S. possession and who is required to file Form 8938 with the Internal Revenue Service is not required to report the following specified foreign financial assets:

(1) A financial account maintained by a financial institution organized under the laws of the U.S. possession of which the specified individual is a bona fide resident;

(2) A financial account maintained by a branch of a financial institution not organized under the laws of the U.S. possession of which the specified individual is a bona fide resident, if the branch is subject to the same tax and information reporting requirements applicable to a financial institution organized under the laws of the U.S. possession;

(3) Stock or securities issued by an entity organized under the laws of the U.S. possession of which the specified individual is a bona fide resident;

(4) An interest in an entity organized under the laws of the U.S. possession of which the specified individual is a bona fide resident; and

(5) A financial instrument or contract held for investment, provided